

(i) A distributor or person authorized to act on behalf of a distributor may notify the treasurer in writing that the distributor no longer desires to have stamps shipped or a meter set without advance payment, and may request that the money in the distributor's account in the fund be paid to the distributor or the distributor's heirs or assigns. The treasurer shall pay the money in the distributor's account as requested at the end of the next quarter after all outstanding taxes owed to the state by the distributor have been paid.

(j) Under no circumstances shall the treasurer return to any distributor an amount greater than the balance in the distributor's account within the cigarette tax recovery trust fund less any sums drawn pursuant to Subsection (g) of this section. The State of Texas' liability to any distributor pursuant to this section is expressly limited to the sums on deposit in the distributor's account at the time the request for return of funds is made.

(k) The treasurer may adopt and enforce rules necessary to carry out this section.

(l) For purposes of this section, "quarter" refers to a quarter of the state's fiscal year. ~~[(a) A distributor may file a surety bond, approved by the treasurer and the attorney general, with a corporate surety authorized to do business in this state, conditioned on timely payment in full for stamps or a meter setting. The treasurer shall set the amount of the bond at 1 1/2 times the amount of stamps and meter setting requested by the distributor to be purchased for the following month. The treasurer shall accept payment by a company check or by a personal check of a bonded distributor.~~

~~[(b) If a bonded distributor fails to pay in full by the due date, the treasurer shall notify the distributor within five days after the due date to appear before the treasurer to show cause why the treasurer should not deny the distributor the privilege of ordering stamps without advance payment. If a distributor fails to show good cause, the treasurer may discontinue shipping stamps or setting meters without advance payment and may enforce payment of the bond.]~~

SECTION 3. Section 154.052(a), Tax Code, is amended to read as follows:

(a) A licensed distributor is, *subject to the provisions of Section 154.051 of this code*, entitled to a discount of 2.75 percent of the face value of stamps purchased, except that an out-of-state purchaser residing in a state that does not give a discount on cigarette tax stamps purchased by a cigarette distributor residing in this state may not purchase stamps at a discount as provided by this section.

SECTION 4. This Act takes effect September 1, 1987, and applies to all cigarette distributors, whether bonded or not, requesting cigarette stamps or a meter setting from the state treasurer without advance payment on or after that date. A cigarette distributor requesting cigarette stamps or a meter setting from the state treasurer without advance payment before the effective date of this Act is covered by the law in effect on the date of the request, and the former law is continued in effect for that purpose.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 13, 1987, by a non-record vote. Passed by the Senate on May 25, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 18, 1987.

Effective Sept. 1, 1987.

CHAPTER 581

H.B. No. 1961

AN ACT

relating to the regulation of certain air conditioning and refrigeration contractors by the Texas Department of Labor and Standards; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1, Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. **SHORT TITLE.** This Act may be cited as the “Air Conditioning and Refrigeration Contractor License Law.”

SECTION 2. Section 2, Air Conditioning Contractor License Law (Article 8861, Vernon’s Texas Civil Statutes), is amended to read as follows:

Sec. 2. **DEFINITIONS.** In this Act:

(1) “Environmental air conditioning” means the process of treating [indoor] air to [continuously] control [its] temperature, humidity, cleanliness, ventilation, and circulation to meet human comfort requirements.

(2) “Air conditioning and refrigeration contractor” means a person [licensed under this Act] who performs air conditioning and refrigeration contracting [designs, installs, constructs, maintains, services, repairs, alters, or modifies any heating, ventilating, or air conditioning product, system, or equipment].

(3) “Commercial refrigeration” means the use of mechanical or absorption equipment to control temperature, humidity, or both in order to satisfy the intended use of a specific space [“Air conditioning contracting” means designing, installing, constructing, maintaining, servicing, repairing, altering, or modifying any heating, ventilating, or air conditioning product, system, or equipment. The term does not include the design, installation, construction, maintenance, service, repair, alteration, or modification of a portable or self-contained ductless air conditioning or heating product that has a cooling capacity of three tons or less or a heating capacity of 36,000 British thermal units or less].

(4) “Process cooling or heating” includes the control of temperature, humidity, or cleanliness solely for proper operation of equipment or for production requirements.

(5) “Commissioner” means the commissioner of the Texas Department of Labor and Standards.

(6) [(5)] “Person” means an individual.

(7) [(6)] “Environmental air [Air] conditioning maintenance work” means repair work and all other work required for the continued normal performance of an environmental [a heating, ventilating, or] air conditioning system. The term does not include the installation of a total replacement of the system or the installation of boilers or pressure vessels that must be installed by licensed persons pursuant to rules and regulations promulgated by the Texas Department of Labor and Standards under the Texas boiler inspection law, Chapter 436, Acts of the 45th Legislature, Regular Session, 1937 (Article 5221c, Vernon’s Texas Civil Statutes).

(8) “Advisory board” means the Air Conditioning and Refrigeration Contractors Advisory Board.

(9) “Air conditioning and refrigeration contracting” means the design, installation, construction, maintenance, service, repair, alteration, or modification of a product or of equipment in environmental air conditioning, commercial refrigeration, or process cooling or heating systems.

(10) “Mechanical integrity” means physical installation of products, systems, or equipment in accordance with their intended purpose and according to:

(A) standards at least as strict as the standards set forth in the Uniform Mechanical Code published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, or their successor organizations, or the Standard Mechanical Code published by the Southern Building Code Congress International, Inc., or its successor organization;

(B) all other applicable codes; and

(C) the manufacturer’s specifications.

(11) “Cooling capacity” means the nominal tonnage of the compression equipment based on 40 degrees Fahrenheit suction temperature and 105 degrees Fahrenheit condensing temperature.

SECTION 3. Section 3, Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3. POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner shall adopt rules for the practice of air conditioning and refrigeration contracting consistent with this Act ~~[not later than the 90th day after the effective date of this Act]~~. The standards prescribed by rule must be at least as strict as the standards set forth in the Uniform Mechanical Code published jointly by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials *or the Standard Mechanical Code published by the Southern Building Code Congress International, Inc., as those codes exist* ~~[that code exists]~~ at the time the rules are adopted. *The commissioner shall enforce this Act and may adopt rules relating to enforcement requirements.*

(b) *The commissioner may issue an emergency order as necessary to enforce this Act if the commissioner determines that an emergency exists requiring immediate action to protect the public health and safety. The order may be issued without notice and hearing or with any notice and hearing that the commissioner considers practicable under the circumstances. If an emergency order is issued under this subsection without a hearing, the commissioner shall set the time and place for a hearing to affirm, modify, or set aside the emergency order.*

(c) *The commissioner may apply for restraining orders or injunctions to enforce this Act and rules adopted and orders issued under this Act. On request of the commissioner, the attorney general or appropriate prosecuting attorney shall represent the commissioner in seeking that relief.*

(d) The commissioner shall prescribe application forms for original and renewal licenses and the design of the licenses.

(e) ~~[(e)]~~ The commissioner shall prescribe the method and content of examinations administered under this Act and shall set compliance requirements for the examinations. The examinations shall be offered only in Travis County and shall be offered on a quarterly basis.

(f) ~~[(d)]~~ The commissioner shall set insurance requirements for persons licensed under this Act. The commissioner may waive the insurance requirements for licensees who do not contract with the general public.

(g) ~~[(e)]~~ The commissioner may employ the personnel necessary to implement this Act. The commissioner shall employ at least two full-time air conditioning and refrigeration contractors ~~[professionals]~~ to serve as ~~[air-conditioning]~~ examiners.

(h) ~~[(f)]~~ The commissioner may authorize necessary disbursements to implement this Act, including office expenses, costs of equipment, and other necessary facilities.

(i) ~~[(g)]~~ The commissioner shall set fees for original and renewal licenses issued under this Act. The commissioner shall set a fee for the licensing examinations. The fees shall be set in amounts that are reasonable and necessary to pay the costs of the administration of this Act. *The fees collected under this subsection shall be deposited in the state treasury to the credit of the general revenue fund.*

(j) ~~[(h)]~~ The commissioner shall maintain a record of his proceedings under this Act.

(k) *The commissioner shall publish annually a directory of the persons licensed under this Act. The commissioner may sell the directory on payment of a reasonable fee set by the commissioner. The fees collected under this subsection shall be appropriated to the department for use in the administration of this Act.*

SECTION 4. The Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) is amended by adding Section 3A to read as follows:

Sec. 3A. ADVISORY BOARD. (a) *The Air Conditioning and Refrigeration Contractors Advisory Board is created to advise the commissioner in adopting rules, setting fees, and enforcing and administering this Act.*

(b) *The advisory board is composed of six members appointed by the governor with the advice and consent of the senate who are experienced in the design, installation, construction, maintenance, service, repair, alteration, or modification of equipment*

used for environmental air conditioning, commercial refrigeration, or process cooling or heating. A member of the advisory board serves a term of six years, with terms expiring on February 1 of odd-numbered years.

(c) The governor shall appoint the advisory board members as follows:

(1) one member must be an official of a municipality with a population of not more than 250,000;

(2) one member must be an official of a municipality with a population greater than 250,000;

(3) four members must be full-time licensed air conditioning and refrigeration contractors, as follows:

(A) one member must hold a Class A license and must practice in a municipality with a population greater than 250,000;

(B) one member must hold a Class B license and must practice in a municipality with a population greater than 250,000;

(C) one member must hold a Class A license and must practice in a municipality with a population greater than 25,000 but not more than 250,000; and

(D) one member must hold a Class B license and must practice in a municipality with a population of not more than 25,000;

(d) For the purposes of Subsection (c) of this section, "population" means population according to the most recent federal decennial census.

(e) The governor shall designate one member of the board to serve as chairman. The commissioner and the chief administrator of this Act serve as *ex officio*, nonvoting members of the advisory board. On the resignation, death, suspension, or incapacity of any member, the governor shall fill the vacancy for the remainder of the unexpired term with an individual who represents the same interests with which the predecessor was identified.

(f) In appointing the air conditioning and refrigeration contractor members of the advisory board, at least one of those appointees should be an air conditioning and refrigeration contractor who employs organized labor, and at least two of those appointees should be registered professional engineers.

(g) The advisory board shall meet at least every six months and may meet at other times at the call of the chairman. The advisory board shall meet at a place designated by the board within the State of Texas. A decision of the advisory board is not effective unless it receives the affirmative vote of at least four members.

(h) The advisory board members serve without compensation, and members are not entitled to reimbursement for any expenses incurred in performing duties under this Act.

SECTION 5. Section 4, Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. AIR CONDITIONING AND REFRIGERATION CONTRACTOR LICENSES [LICENSE]. (a) Air conditioning and refrigeration contractor licenses are of two classes:

(1) a Class A license entitles the licensee to perform air conditioning and refrigeration contracting, of each type for which the license is endorsed, on systems, products, or equipment of any size or capacity; and

(2) a Class B license entitles the licensee to perform air conditioning and refrigeration contracting, of each type for which the license is endorsed, on systems, products, or equipment of not more than 25 tons cooling capacity or of not more than 1.5 million British thermal units per hour output heating capacity.

(b) Endorsements are of two types:

(1) an environmental air conditioning endorsement entitles the licensee to perform air conditioning and refrigeration contracting in relation to environmental air conditioning within the class of license held; and

(2) a commercial refrigeration and process cooling and heating endorsement entitles the licensee to perform air conditioning and refrigeration contracting in relation to commercial refrigeration and process cooling and heating within the class of license held.

(c) Each license shall be endorsed for either environmental air conditioning or commercial refrigeration and process cooling and heating, or both. For each endorsement the licensee must perform satisfactorily on a separate examination related to the endorsement. A licensee may not perform under a state license air conditioning and refrigeration contracting of a type for which the person's license is not endorsed.

(d) The commissioner shall prescribe separate examinations for each class of license and, within each class, separate examinations for environmental air conditioning and for commercial refrigeration and process cooling and heating. ~~[Air conditioning contractor licenses are of two classes. A Class A license entitles the licensee to install, repair, or alter summer or winter environmental air conditioning systems of any size or capacity. A Class B license entitles the licensee to install, repair, or alter an environmental air conditioning system that develops a total of not more than 25 tons cooling capacity and not more than 1,500,000 British thermal units per hour output heating capacity. The commissioner shall prescribe an appropriate examination for each class of license.]~~

(e) ~~[(b)]~~ An applicant for an air conditioning and refrigeration contractor license must be at least 18 years old and must present to the commissioner satisfactory evidence of ~~[(have)]~~ at least 36 months ~~[(three years)]~~ of practical experience with the tools of the trade in the preceding five years ~~[(in air conditioning work)]~~. For purposes of the experience requirement, a degree or diploma in air conditioning engineering, refrigeration engineering, or mechanical engineering from an institution of higher education whose program is approved by the Texas State Board of Registration for Professional Engineers for the purpose of licensing professional engineers is considered the equivalent of two years of practical experience.

(f) ~~[(e)]~~ The application must be made on a form prescribed by the commissioner and must specify the class of license and each endorsement the applicant seeks. The application must be verified and must be accompanied by:

(1) three recommendations from *air conditioning and refrigeration contractors licensed under this Act* ~~[(competent people in the regulated industry)]~~;

(2) evidence of the insurance coverage required under this Act;

(3) a statement of the applicant's practical experience; and

(4) the examination fee.

(g) ~~[(d)]~~ The commissioner shall issue an ~~[(the)]~~ air conditioning and refrigeration contractor license to an applicant who possesses the required qualifications, passes the appropriate examinations ~~[(licensing examination)]~~, and pays the examination fee and the original license fee required by this Act. An applicant who fails an ~~[(the)]~~ examination is eligible for reexamination.

(h) ~~[(e)]~~ A license issued under this Act expires three years after the date it was issued. To renew a license, the licensee must submit to the commissioner before the expiration date a renewal application, on a form prescribed by the commissioner, accompanied by the renewal fee. The commissioner shall notify the licensee of the expiration date of the license and the amount of the renewal fee. The notice shall be mailed not later than the 30th day before the expiration date.

(i) With the advice of the advisory board, the commissioner shall adopt rules relating to the use, display, and advertisement of a licensee's license.

SECTION 6. Section 5(a), Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A violation of this Act or a rule adopted under this Act is a ground for the denial, suspension, or revocation of a license issued under this Act. The failure to provide proper installation, service, and mechanical integrity under this Act constitutes a violation of this Act. An intentional or knowing misrepresentation of necessary

services, services to be provided, or services that have been provided, or a fraudulent promise made to influence, persuade, or induce an individual to contract for services constitutes a violation of this Act and a ground for the suspension or revocation of a license issued under this Act.

SECTION 7. The Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) is amended by adding Section 5A to read as follows:

Sec. 5A. CONSUMER COMPLAINT INVESTIGATION. (a) The commissioner shall prepare information of consumer interest describing the functions performed by the commissioner under this Act and the rights of consumers as affected by this Act. The information must describe the procedure by which a consumer complaint is filed with and resolved by the commissioner. The commissioner shall make the information available to the general public.

(b) The commissioner shall investigate consumer complaints filed with the commissioner. If the commissioner determines after investigation that a licensee has violated this Act or a rule adopted under this Act, the commissioner may take appropriate action under Section 5 of this Act.

SECTION 8. Section 6, Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (c), (d), and (e) and by adding Subsections (f) and (g) to read as follows:

(a) This Act does not apply to a person who:

(1) performs air conditioning and refrigeration contracting [work] in a building owned solely by him as his home;

(2) performs *environmental* air conditioning maintenance work if (i) the person is a maintenance man or maintenance engineer who is a regular bona fide employee of the property owner, the property lessee, or the management company managing the property where the [air conditioning] maintenance work is being performed, (ii) the work is performed in connection with the business in which the person is employed, and (iii) the person and the person's employer referred to in (i) above do not engage in the occupation of air conditioning and refrigeration contracting for the general public;

(3) performs air conditioning and refrigeration contracting and is regularly employed by a regulated electric or gas utility;

(4) *is licensed as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), performs work in connection with the business in which the person is employed, and does not engage in the practice of air conditioning and refrigeration contracting for the general public [performs plumbing work and is licensed under The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes)];*

(5) *performs process cooling or heating work for an industrial operation such as a chemical plant, petrochemical plant, refinery, natural gas plant, or natural gas treating plant when employed by that operation; [assists in the performance of air conditioning work under the direct personal supervision of a licensee];* or

(6) performs air conditioning and refrigeration contracting on:

(A) a portable or self-contained ductless environmental air conditioning product that has a cooling capacity of three tons or less;

(B) a portable or self-contained heating product that does not require the forced movement of air outside the heating unit; or

(C) *environmental air conditioning equipment that is intended for temporary use and is not fixed in place [air conditioning maintenance work if the person is licensed as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes), the work is performed in connection with the business in which the person is employed, and the person does not engage in the occupation of air conditioning contracting for the general public].*

(c) A person licensed under this Act may not perform or offer or attempt to perform any act, service, or function that is defined as the practice of engineering by The Texas

Engineering Practice Act, as amended (Article 3271a, Vernon's Texas Civil Statutes). ~~[This Act does not apply to a person licensed in this state as a professional engineer and engaged in business as a professional engineer.]~~

(d) *A person licensed under this Act may not perform or offer or attempt to perform any act, service, or function regulated under Chapter 113, Natural Resources Code, unless licensed under that law. A person regulated under Chapter 113, Natural Resources Code, may not perform or offer or attempt to perform air conditioning or refrigeration contracting unless licensed under this Act* ~~[This Act does not apply to a person who is regulated under Chapter 113, Natural Resources Code].~~

(e) *A person licensed under this Act may not perform or offer or attempt to perform any act, service, or function that is defined as plumbing work under The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes) unless licensed under that law. A person who is licensed in this state as a plumber and is engaged in business as a plumber may not perform or offer or attempt to perform air conditioning and refrigeration contracting unless licensed under this Act.*

(f) *This article does not apply to a person or firm that is registered as a manufacturer, retailer, or installer and regulated pursuant to the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and that engages exclusively in air conditioning and refrigeration contracting for manufactured homes.*

(g) *A person who assists in the performance of air conditioning and refrigeration contracting work under the supervision of a licensee is not required to be licensed by a municipality.*

SECTION 9. Section 7, Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 7. **REPORTING REQUIREMENT.** Each person licensed under this Act shall notify the municipal authority who has control of the enforcement of regulations relative to air conditioning and refrigeration contracting in the municipality in which the person is engaged in air conditioning and refrigeration contracting that the person has obtained a state license. The notification must be in the form required by the municipality ~~[contain the name and address of the licensee].~~

SECTION 10. Section 8, Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 8. **PENALTY.** Except as provided in Section 9, a person commits an offense if the person knowingly or intentionally engages in air conditioning and refrigeration contracting without a license issued under this Act. An offense under this section is a Class B ~~[C]~~ misdemeanor.

SECTION 11. Section 9, Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. **MUNICIPAL REGULATION.** (a) A license issued by a municipality of this state is valid under the terms of the license within that municipality. However, a license issued under this Act is valid throughout the state, and the holder and people under supervision are not required to hold a municipal license to practice air conditioning and refrigeration contracting in any municipality within this state.

(b) *A municipality may by ordinance adopt and enforce standards for air conditioning and refrigeration contractors that are consistent with the standards established under this Act. The municipality shall report violations of the ordinance to the commissioner not later than the 10th day after the date on which the municipality takes action to enforce the ordinance. Conviction of an offense under the municipal ordinance is a ground for the denial, suspension, or revocation of a license issued under this Act.*

SECTION 12. Section 11, Air Conditioning Contractor License Law (Article 8861, Vernon's Texas Civil Statutes), is repealed.

SECTION 13. (a) The change in law made by Section 10 of this Act applies only to the punishment for an offense committed on or after the effective date of this Act. For

purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 14. (a) This Act takes effect September 1, 1987.

(b) A person who holds a valid Class A air conditioning contractor license on the effective date of this Act is entitled, without additional examination, for a license as a Class A air conditioning and refrigeration contractor with endorsements for environmental air conditioning and for commercial refrigeration and process cooling or heating if the licensee applies to the commissioner of the Texas Department of Labor and Standards not later than September 1, 1988.

(c) A person who holds a valid Class B air conditioning contractor license on the effective date of this Act is entitled, without additional examination, to a Class B air conditioning and refrigeration contractor license of the same class with endorsements for environmental air conditioning and for commercial refrigeration and process cooling or heating if the licensee applies to the commissioner of the Texas Department of Labor and Standards not later than September 1, 1988.

(d) In making initial appointments to the Air Conditioning and Refrigeration Contractors Advisory Board, the governor shall designate two members for terms expiring February 1, 1989, two members for terms expiring February 1, 1991, and two members for terms expiring February 1, 1993.

SECTION 15. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 15, 1987, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1961 on May 30, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 29, 1987, by a viva-voce vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.

CHAPTER 582

H.B. No. 1963

AN ACT

relating to the regulation of alcoholic beverages; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 106.03, Alcoholic Beverage Code, is amended to read as follows:

Sec. 106.03. SALE TO MINORS. (a) A person commits an offense if *with criminal negligence* he [~~knowingly~~] sells an alcoholic beverage to a minor.

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 21 years old or older by displaying an apparently valid Texas driver's license or an identification card issued by the Texas Department of Public Safety, containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500, by confinement in jail for not more than one year, or by both.